

First Supplement to Memorandum 2017-57

**Disposition of Estate Without Administration: Interest Rate
(Comments of Judge Arnold H. Gold)**

The Commission¹ has received a letter from Judge Arnold H. Gold, Retired, commenting on the interest rate issue that is discussed in Memorandum 2017-57. His letter is attached as an Exhibit.

The staff greatly appreciates the input from Judge Gold, who is an expert in estate planning law and a frequent contributor to the Commission's work in this area.

Judge Gold agrees with TEXCOM that the current 10 percent interest rate might be too high.

He offers an additional reform possibility — grant a court discretion to reduce or waive the interest discussed in Memorandum 2017-57, provided that the beneficiary has acted reasonably and in good faith under the circumstances known to the beneficiary. He points to similar rules in the Probate Code that impose liability for a breach of fiduciary duty (including the imposition of interest on any profits earned by a fiduciary as a result of the breach).

Respectfully submitted,

Brian Hebert
Executive Director

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

HON. ARNOLD H. GOLD

JUDGE OF THE SUPERIOR COURT, RETIRED
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November 25, 2017

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BY: _____

Mr. Brian Hebert
Executive Director
California Law Revision Commission
4000 Middlefield Road
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Re: Memorandum 2017-57
Disposition of Estate Without
Administration: Interest Rate

Dear Mr. Hebert:

I have received and read with interest Commission Memorandum 2017-57, regarding the propriety of the 10 percent interest rate used when certain funds are required to be returned to a decedent's estate.

I share TEXCOM's view that under today's market conditions the 10 percent number may be too high.

I write to mention an additional alternative to the four possible reforms listed in the bullet points at the bottom of page 12 and the top of page 13 of Memorandum 2017-57:

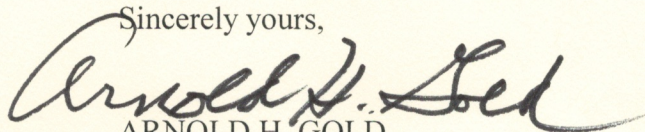
With respect to interest on losses caused by a breach of fiduciary duty, Probate Code Sections 9601 (relating to decedent's estates), 2401.3 and 2401.5 (relating to guardianships and conservatorships) and 16440 and 16441 (relating to trusts) require the court to impose, by way of interest, 10 percent as a minimum. However, those sections each empower the court, in its discretion, to excuse the breaching fiduciary, in whole or in part, from the mandated interest if that fiduciary has acted reasonably and in good faith under the circumstances known to that fiduciary.

Mr. Brian Hebert
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In my experience, vesting the court with the power to reduce the applicable interest rate under appropriate circumstances has worked well. Some approach modeled after those Probate Code provisions may be appropriate to remedy the problem raised by TEXCOM: Impose a fixed (or, for that matter, variable) rate but vest the court with discretion to reduce that rate under appropriate circumstances.

Best regards.

Sincerely yours,



ARNOLD H. GOLD